

FCC MAIL SECTION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FCC 95M-102

APR 10 3 01 PM '95

In Matter of)	WT DOCKET NO. 94-147	51153
)		
JAMES A. KAY, JR.)		
)		
Licensee of one hundred sixty)		
four Part 90 licenses in the)		
Los Angeles, California area.)		

O R D E R

Issued: April 06, 1995 ; Released: April 07, 1995

This is a ruling on a Motion To Compel Discovery that was filed on March 17, 1995, by James A. Kay, Jr. ("Kay"). An Opposition was filed by the Wireless Telecommunications Bureau ("Bureau") on March 29, 1995.

The Presiding Judge permitted Kay to propound ten interrogatories to the Bureau with respect to each of the ten substantive paragraphs of the Hearing Designation Order ("HDO"). Order 95M-28 released February 1, 1995. The purpose for this limited discovery was to provide Kay with more particularized HDO specifications to facilitate his preparation for trial.¹ Kay propounded interrogatories to the Bureau on the first ten paragraphs of the HDO and the Bureau has responded.

This interrogatory discovery was never intended to require the Bureau to delineate the universe of its evidence and trial theories. Moreover, the Commission's Rules of Practice specifically limit the scope of permissible interrogatory discovery of the Bureaus. See 47 C.F.F. §1.311(b)(4) (generally limited to location of documents and identity of witnesses except informers). After reviewing the Interrogatories and Responses and the Motion and the Opposition, as well as Requests To Admit having accompanying documents, it is determined that Kay seeks to exceed the quantity and quality of the interrogatory discovery to which he is entitled.

In Paragraph No. 1 of the HDO, the Commission alleges that Kay "has failed to respond to Commission requests for written statements of fact required under §308 of the Communications Act of 1934 as amended."² In his

¹ As an illustration of the narrow interrogatory discovery that was authorized, the Presiding Judge had noted that where the word "stations" was stated in Paragraph 2 of the HDO, the Bureau could be asked to identify each such station. Id. at n. 2.

² §308(b) of the Act provides in pertinent part:

The Commission, at any time after the filing of such original application and during the term of any such licenses, may require from an applicant or licensee further written statements of fact to enable it to determine whether such original application should be---revoked.

Interrogatory No. 1-2,³ Kay has asked the Bureau to identify "all facts which Kay failed to provide" in response to the §308 letter.⁴ Kay has the same or better knowledge and control of the information that he provided in response to the letter. In addition, the Bureau furnished Kay with a series of items of correspondence in a request to admit which documents are cited by the Bureau as ones which "encompass the facts sought in this interrogatory." That reference to documents and the documents themselves, copies of which are in Kay's possession or were furnished to Kay by the Bureau, provide a full and complete answer to the interrogatory.

In his Interrogatory No. 1-4, Kay requests that the Bureau "state with particularity each fact which Kay has failed to supply" that he was required to provide in his answer to the §308 letter. The Bureau responded by producing copies of each of the letters and Kay's responses. The Bureau believes that a narrative description of those items would be redundant. The Presiding Judge agrees with that assessment. Also, requiring a more detailed response to that question would be an intrusion into the theories and thought processes of the Bureau counsel and would require the Bureau to design and disclose a minimally acceptable response for Kay to have made to the §308 letter. This request goes far beyond allowable discovery under the Commission's Rules of Practice and the intended scope of the Presiding Judge's Order.

In his Interrogatories Nos. 1-5 and 1-6, Kay requests that the Bureau provide "each fact ascertained by investigation or contained in any complaint" and which supports the belief that Kay violated the Act or that Kay does not possess the character qualifications to be a licensee. Again, it would be an unlawful intrusion into the Bureau's trial preparation to require any more information than the Bureau has already provided in its responses and in other previous discovery in the documentary attachments to the Bureau's Request for Admissions and Genuineness of Documents which was served upon Kay on February 17, 1995.

In his Interrogatories Nos. 1-7 and 1-8, Kay seeks to have the Bureau identify all matters not discussed in Interrogatory No.1 on which Bureau counsel intend to question Kay at his deposition. The Bureau will not be required to disclose in advance the subjects of the questions it intends to propound to Kay at his deposition. Kay will receive timely a Bureau Notice of Deposition under the Commission's Rule of Practice which provides for notice of "the matters upon which [Kay] will be examined." 47 C.F.R. §1.315(a)(3).

³ The numbering system that the Bureau used in its Responses to the Kay Interrogatories is utilized here. Interrogatory "No. 1-2" means that the first number relates to the HDO paragraph and the second number relates to the particular Kay interrogatory relating to that paragraph of the HDO.

⁴ The letter was sent to Kay on January 31, 1994, wherein Kay was asked to substantiate the loading of his stations by providing customer lists and telephone numbers. The Commission charges that at one time Kay answered that "there is no date---for which the submission of the requested information would be convenient." See HDO at Para. 8.

There will not be an order issued by the Presiding Judge in advance of that deposition notice which compels the Bureau to provide more information than is required under the Rules of Practice.

Throughout the remainder of his Motion To Compel, Kay repeats this manner and character of seeking additional information from the Bureau. Each specification of the Motion To Compel will not be delineated here. But it is noted that each of the interrogatories that was propounded by Kay to the Bureau and each Bureau response has been reviewed by the Presiding Judge. It has been determined that the Bureau has provided documentary and/or narrative information about the following subjects: loading (2-5); trunked mode operations at Mt. Lukens (2-7); inspection of Station WNWK 982 at Mt. Lukens (2-8); copies of complaints (3-2); identity of stations charged with inflated loading (3-4); willful interference (4-1); abuses of Commission processes (5-1); and evidence leading up to §308 letters (6-1). Other interrogatory questions are answered by the Bureau cross-referencing other responses, and/or cross-referencing documents attached to the responses or documents identified and furnished to Kay in the Bureau's previously served Request For Admissions and Genuineness of Documents. Kay is found to have received responsive answers to his interrogatory questions.

There is no basis found for compelling the Bureau to provide Kay with more expansive responses. To require that the Bureau comply with the additional information sought by Kay's Motion To Compel would require the disclosure of matter which would be redundant, burdensome and/or protected as work product.

Ruling

Accordingly, IT IS ORDERED that the Motion To Compel Discovery filed by James A. Kay, Jr. on March 17, 1995, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Administrative Law Judge